

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Public Safety/State Highway Patrol intends to amend the rule cited as 14B NCAC 07A .0116.

Proposed Effective Date: July 1, 2014

Public Hearing: **Date and time changed due to inclement weather.**

~~**Date:** March 4, 2014~~

~~**Time:** 9:00 a.m.~~

Date: April 2, 2014

Time: 10:00 a.m.

Location: : SHP Troop C Headquarters, 1831 Blue Ridge Road, Raleigh, NC 27607

Reason for Proposed Action: Agency desires to improve existing rules.

Procedure by which a person can object to the agency on a proposed rule: *The agency will accept written objections to the proposed rule amendment until the expiration of the comment period on April 21, 2014.*

Comments may be submitted to: Captain Freddy L. Johnson Jr., 4231 Mail Service Center, Raleigh, NC 27699-4231, phone (919) 436-3072, fax (919) 733-2161, email freddy.johnson@ncdps.gov.

Comment period ends: April 21, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b)(2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 7A – STATE HIGHWAY PATROL

SUBCHAPTER 07A - ENFORCEMENT REGULATIONS

SECTION .0100 – WRECKER SERVICE

14B NCAC 07A .0116 ROTATION WRECKER SERVICE REGULATIONS

(a) The Troop Commander shall include on the Patrol Rotation Wrecker List only those wrecker services which agree in writing to adhere to the following provisions:

- (1) A wrecker service desiring to be included on the Highway Patrol Rotation Wrecker List shall complete a wrecker application on a form designated by the Patrol. All applications shall be submitted to the appropriate District First Sergeant.
- (2) In order to be listed on a rotation wrecker list within a zone, a wrecker service must have a full-time business office within that Rotation Wrecker Zone that is staffed and open during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, and a storage facility. The Wrecker service must have someone available to accept telephone calls from the Patrol, and to allow access to towed vehicles, or to retrieve towed vehicles by the registered owner, operator, or legal possessor during business hours. The business office may not be the same physical address as the owner's residence unless zoned for commercial purposes and advertised as a

business property. A representative from the wrecker service shall be available on call on a 24-hour basis, for emergencies. The wrecker service shall allow vehicles to be retrieved between the hours of 8:00 a.m. to 5:00 p.m., seven days a week, excluding holidays. An individual (registered owner, legal possessor, or operator) shall not be charged a storage fee for days that he/she could not retrieve his/her vehicle as a result of an action or omission on the part of the wrecker service (such as where the wrecker service was not open, did not answer the telephone or a representative was not available to release the vehicle).

- (3) Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment and storage facilities may not be shared with or otherwise located on the property of another wrecker service and must be independently insured. Vehicles towed at the request of the Patrol must be placed in the storage owned and operated by the wrecker service on the rotation list. A storage facility for a small wrecker shall be located within the assigned zone. For wrecker services with large wreckers the storage facility for vehicles towed with the large wrecker may be located anywhere within the county. To be listed on the large rotation wrecker list, a wrecker service must have at least one large ~~wrecker~~, wrecker located within the county and designated for the sole use in that county. To be listed on the small rotation wrecker list, a wrecker service must have at least one small ~~wrecker~~, wrecker located within the assigned zone and designated for the sole use in that assigned zone. A wrecker may not be on more than one Patrol Rotation list. In any case where husband and wife or other family members are engaged in the business of towing vehicles and desire to list each business separately on the Patrol wrecker rotation list, the wrecker service shall establish that it is a separate legal entity for every purpose, including federal and state tax purposes. Nothing in this rule precludes a wrecker service from responding to private calls outside the assigned zone or county.
- (4) Each wrecker must be equipped with legally required lighting and other safety equipment to protect the public and the equipment must be in good working order.
- (5) Each wrecker on the Patrol Rotation Wrecker List must be equipped with the equipment required on the application list and the equipment must, at all times, be operating properly.
- (6) The wrecker service operator must remove all debris, other than hazardous materials, from the highway and the right-of-way prior to leaving the incident/collision scene. This service must be completed as a part of the required rotation service and shall not be charged as an extra service provided. Hazardous materials consist of those materials and amounts that are required by law to be handled by local Hazardous Materials Teams. Hazardous Materials or road clean-up other than debris may be billed in quarter hour increments after the first hour on scene.
- (7) The wrecker service must be available to the Patrol for rotation service on a 24-hour per day basis and accept collect calls (if applicable) from the Patrol. Calls for service must not go unanswered for any reason.
- (8) The wrecker service shall respond, under normal conditions, in a timely manner. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker shall forfeit the call and shall immediately leave the collision/incident scene.
- (9) For Patrol-involved incidents, the wrecker service shall respond only upon request from Patrol authority or at the request of the person in apparent control of the vehicle to be towed.
- (10) The wrecker service, when responding to rotation wrecker calls, shall charge reasonable fees for services rendered. Towing, storage and related fees charged for rotation services may not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions. Wrecker services may secure assistance from another rotation wrecker service when necessary, but only one bill shall be presented to the owner or operator of the vehicle for the work performed. A price list for recovery, towing and storage shall be established and kept on file at the place of business. A price list for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall be furnished, in writing on a Patrol form, to the District First Sergeant upon request. The District First Sergeant shall approve all price lists submitted within their respective District if they are determined to

be reasonable, consistent with fees charged by other Highway Patrol rotation wrecker services within the District and do not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions. The District First Sergeant shall retain a copy of all approved price lists in the appropriate wrecker service file located in the district office. Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle. Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends may not exceed the towing fees for recovery and transport of vehicles charged during regular "Business Hours" by more than 10 percent. A mileage fee may only be charged if the customer requests the vehicle to be towed to a location outside of the assigned wrecker zone or county. If a mileage fee is warranted, the wrecker driver shall inform the owner, operator or legal possessor of the vehicle of any additional charge for mileage prior to towing. Each Troop Commander shall designate a Troop Lieutenant to serve as a Rotation Wrecker Liaison for their respective Troop. The individual price list for each respective wrecker service shall be made available to customers upon request. Copies of the approved price list shall be maintained within each wrecker and shall be given to the owner, operator or legal possessor of a vehicle being towed as a result of a Highway Patrol rotation wrecker call by the wrecker driver, if the owner, operator or legal possessor of the vehicle being towed is present at the scene. Prices indicated on this form shall be the maximum amount that will be charged for a particular service; however, this does not prevent charges of a lesser amount for said service.

- (11) All wrecker operators shall have a valid driver's license for the type of vehicles driven; a limited driving privilege is not allowed.
- (12) Wrecker owners, operators and employees shall not be abusive, disrespectful, or use profane language when dealing with the public or any member of the Patrol and shall cooperate at all times with members of the Patrol.
- (13) The wrecker service shall adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker service vehicles and have insurance as required by G.S. 20-309(a).
- (14) The wrecker service shall employ only wrecker operators who demonstrate an ability to perform required services in a safe, timely, efficient and courteous manner and who satisfy all of the requirements for wrecker drivers established or referenced ~~herein~~ herein; and shall not allow unauthorized passengers when responding to Highway Patrol rotation calls.
- (15) The wrecker service must notify the District First Sergeant of any insurance lapse or change. Wrecker Services shall ensure the NC Highway Patrol is listed as "Certificate Holder" on the Certificate of Liability Insurance, in c/o the District First Sergeant, complete with the current mailing address for the Highway Patrol District Office tasked with the responsibility for ensuring compliance with Highway Patrol policy regarding the respective wrecker service.
- (16) The wrecker service shall notify the Patrol whenever the wrecker service is unable to respond to calls.
- (17) Notification of rotation wrecker calls shall be made to the owner/operator or employee of the wrecker service. Notification shall not be made to any answering service, pager or answering machine.
- (18) Wrecker service vehicles shall be marked on each side by printing the wrecker service name, city and state in at least three inch letters. No magnetic or stick-on signs shall be used. Decals are permissible. The wrecker service operator shall provide a business card to the investigating officer or person in apparent control of the vehicle before leaving the scene.
- (19) Each wrecker service vehicle must be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service. Dealer tags shall not be displayed on wreckers that respond to rotation calls.
- (20) Wrecker Services shall secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed.
- (21) Upon application to the Patrol Rotation Wrecker List, the owner shall ensure that the owner and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued (PJC):

- (A) Within the last five years of:
 - (i) A first offense under G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
 - (ii) Any misdemeanor involving an assault, an affray, disorderly conduct, being drunk and disruptive, larceny or fraud;
 - (iii) Misdemeanor Speeding to Elude Arrest; or
 - (iv) A violation of G.S. 14-223, Resist, Obstruct, Delay.
- (B) Within the last ten years of:
 - (i) Two or more offenses in violation of G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
 - (ii) Felony speeding to elude arrest; or
 - (iii) Any Class F, G, H or I felony involving sexual assault, assault, affray, disorderly conduct, being drunk and disruptive, fraud, larceny, misappropriation of property or embezzlement.
- (C) At any time of:
 - (i) Class A, B1, B2, C, D, or E felonies;
 - (ii) Any violation of G.S. 14-34.2, Assault with deadly weapon on a government officer or employee, 14-34.5, Assault with firearm on a law enforcement officer; or G.S. 14-34.7, Assault on law enforcement officer inflicting injury;
 - (iii) Any violation of G.S. 20-138.5, Habitual DWI. For convictions occurring in federal court, another state or country or for North Carolina convictions for felonies which were not assigned a class at the time of conviction, the North Carolina offense which is substantially similar to the federal or out of state conviction or the class of felony which is substantially similar to the North Carolina felony shall be used to determine whether the owner or driver is eligible. Any question from the owner of a Wrecker Service concerning a criminal record shall be discussed with the First Sergeant or his designee; or
 - (iv) Three felony offenses in any federal or state court or combination thereof. The commission of a felony is not considered to be a second or subsequent felony unless it is committed after the conviction or guilty plea to the previous felony.
- (22) Upon employment or upon the request of the District First Sergeant, the owner of the wrecker service shall supply the Patrol with the full name, current address, date of birth, and photo copy of drivers license, valid work VISA, or other INS Documentation for all wrecker drivers and owner(s) in order for the Patrol to obtain criminal history information. The Wrecker Service shall also provide a certified copy of the driving record for the owner and each driver authorized to drive on rotation upon initial application, upon the hiring of a driver if hired after initial application, and at the time of periodic wrecker inspections. The wrecker service shall inform the District First Sergeant if the owner or a driver is charged with, convicted of, enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of the crimes listed in Subparagraph (21) of this Paragraph. Upon notification that a driver or owner was charged with any of the crimes listed in this Rule, the Patrol may conduct an independent administrative investigation. Willful failure to notify the District First Sergeant as required herein shall result in removal from the rotation wrecker service for a minimum of 12 months.
- (23) Upon request or demand, the rotation wrecker shall return personal property stored in or with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be paid. Personal property, for purposes of this provision, includes any goods, wares, freight, or any other property having any value whatsoever other than the functioning vehicle itself.
- (24) The wrecker service shall tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority, after financial obligations have been finalized.

- (25) Unless the vehicle is being preserved by the Patrol as evidence, the wrecker service shall allow insurance adjusters access to and allow inspection of the vehicle at any time during normal working hours.
- (26) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of Patrol or Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees.
- (27) Being placed on the Patrol Rotation Wrecker List does not guarantee a particular number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation wrecker list, nor entitle any wrecker service to any compensation as a consequence for not being called in accordance with the list or when removed from the rotation wrecker list.
- (28) The failure to respond to a call by the Patrol shall result in the wrecker service being placed at the bottom of any rotation wrecker list and the wrecker service shall then be "automatically by-passed" when that wrecker service comes up for its next rotation call.
- (29) The District First Sergeant or his designee shall subject rotation wreckers and facilities to inspections during normal business hours.
- (30) A rotation wrecker service, upon accepting a call for service from the Patrol, must use its wrecker. Wrecker companies shall not refer a call to another wrecker company or substitute for each other.
- (31) If a rotation wrecker service moves its business location or has a change of address, the owner of the wrecker service must notify the District First Sergeant of the new address or location. Notification shall be made in writing, no later than ten days prior to the projected move. The wrecker service is not entitled to receive rotation calls prior to inspection of the new facility.
- (32) A wrecker service may dispatch either a wrecker or a car carrier "rollback" in response to a Patrol rotation wrecker call, except where the wrecker service is advised that a particular type of recovery vehicle is needed due to existing circumstances.
- (33) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of alcohol on his/her breath or while under the influence of alcohol, drugs or any impairing substance.
- (34) A wrecker service shall have in effect a valid hook or cargo insurance policy issued by a company authorized to do business in the State of North Carolina in the amount of fifty thousand dollars (\$50,000) for each small wrecker and one hundred fifty thousand dollars (\$150,000) for each large wrecker or as otherwise required by Federal regulation, whichever is greater. In addition, each wrecker service shall have a garage keeper's insurance policy from an insurance company authorized to do business in the State of North Carolina covering towed vehicles in the amount of one hundred thousand dollars (\$100,000).

(b) The District First Sergeant shall conduct an investigation of each wrecker service desiring to be placed on the Patrol Rotation Wrecker List and determine if the wrecker service meets the requirements set forth in this Rule. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth in this Rule, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing to place it on the rotation wrecker list. Any wrecker service that fails to comply with the requirements of this Rule may be removed from the rotation wrecker list.

(c) The Troop Commander or designee shall ensure that a wrecker service will only be included once on each rotation wrecker list.

(d) If the Troop Commander or designee chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system.

(e) If a wrecker service responds to a call it shall be placed at the bottom of the rotation wrecker list unless the wrecker service, through no fault of its own, is not used and receives no compensation for the call. In that event, it shall be placed back at the top of the rotation list.

History Note: *Authority G.S. 20-184; 20-185; 20-187; 20-188.*